

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LAURA LASCOLA, Individually, and
as Sole Heir and Next of Kin of
NORMA DALE MASSA, deceased,

Plaintiff,

VS.

CAUSE NO. 2:06CV80-P-A

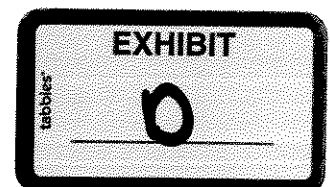
BARDEN MISSISSIPPI GAMING, LLC,
d/b/a FITZGERALD-S CASINO HOTEL-TUNICA;
TUNICA COUNTY MISSISSIPPI; et al.

Defendant

SWORN AFFIDAVIT OF FRED DEL MARVA, PI, PPO

I, Fred Del Marva, PI, PPO under the penalty of perjury, do hereby swear and affirm the following to be true and correct to the best of knowledge and belief to wit:

As I have already stated in my "Opinion Report" filed in the above styled cause of action (see attached Opinion Report which I hereby authenticate, endorse and incorporate herein). It is my opinion based upon my over forty (40) years in the hospitality industry, which includes hotel and casino premise and security liability issues, that Fitzgerald's Guest Security (ie, Barden Mississippi Gaming, LLC) on December 13, 2004 was understaffed and inadequately trained to recognize that Norma Massa, a disabled adult, was in need of assistance. Further, it is my opinion that the failure of Fitzgerald's Guest Security to recognize that Norma Massa was in distress directly contributed to her untimely death. In addition, Fitzgerald's Guest Security Shuttle Bus driver violated their own policies and procedure by failing to stop and address Mrs. Massa as to why she was in a limited access area for 25 to 35 minutes (noting the Shuttle Bus



passed by here at least three (3) times). This is particularly true when this was a limited access area and there were no other patrons in the area during the entire time Mrs. Massa was wandering around in the area.

Casinos are not the insurer or guarantor of the safety of their invitees. The duty imposed on them is to act in a reasonable way to prevent and or deter harm to anyone using their property [inside or outside].

The standard of care in the casino industry is "casino specific". Meaning, that standards may differ from casino to casino based on different circumstances such as location, clientele, etc.

The Fitzgerald in question, catered, solicited, indulged and, promoted a clientele of older, assisted-living and impaired senior citizens who, required a standard of care different from a casino such as the Palm and Hard Rock casinos where the average invitee is from 21 to 45 years of age and are able to take care of themselves.

When a business solicits a clientele of that nature [seniors] they are required to modify and adjust their standards to accommodate that clientele to provide them with a safe and secure environment free from harm. This exactly what Fitzgerald failed to do.

Fitzgerald's Guest Security failed to create a safe and secure environment and failed to act with reasonable care for the older clientele they consciously and intentionally solicited therefore, violating their duty of care owed to Mrs. Massa. The methodology, principles, procedures, and actions employed by Fitzgerald's Guest Security (Barden Mississippi Gaming, LLC), with regard to providing a safe and secure environment, providing adequate security, providing adequate external surveillance, providing adequate training is not consistent with the casino/hotel industry standard. As a direct and proximate cause and foreseeable result of Defendant Barden Mississippi Gaming's negligent acts, errors and omissions as stated above,

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Mrs. Massa perished in the nearby woods.

In addition to the aforementioned, I hereby authenticate, adopt and incorporate my Opinions Report heretofore submitted to this Court and attached hereto verbatim.

THIS DONE AND PASSED, before me, Notary Public, and the undersigned affiant and competent witnesses, after due reading of the whole, on the date and in the place aforesaid.

Further the affiant sayeth naught.

AFFIANT:

Fred Del Marva
Fred Del Marva, PI, PPO

STATE OF ARIZONA
COUNTY OF MARICOPA

SWORN TO AND SUBSCRIBED before me by Fred Del Marva, PI, PPO this the 1st Day of September, 2008.

Caroline Cruz
NOTARY PUBLIC
My commission expires.

